UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/811,727	03/29/2004	Bruno Pfeiffer	SERVIER 398 PCT	1430

7590 06/07/2006

The Firm of Hueschen and Sage
500 Columbia Plaza
350 East Michigan Avenue
Kalamazoo, MI 49007

EXAMINER	
SHIAO, REI TSANG	
ART UNIT	**PAPER NUMBER**
1626	

DATE MAILED: 06/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/811,727	PFEIFFER ET AL.	
	Examiner	Art Unit	
	Robert Shiao	1626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *24 April 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *12-23* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *12-23* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☒ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *4/24/06*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. This application claims benefit of the foreign applications: FRANCE 00.08791 with a filing date 07/06/2000; and FRANCE PCT/FR01/02169 with a filing date 07/06/2001. However, the certified copies of the instant foreign priority documents have not been received in the Office. Applicants are requested to file the foreign priority documents to the Office.

2. Claims 12-23 are pending in the application.

Information Disclosure Statement

3. Applicant's Information Disclosure Statement, filed on April 24, 2006, has been considered. Please refer to Applicant's copy of the 1449 submitted herein.

Responses to Election/Restriction

4. Applicant's election with traverse of Group I claims 12, 20 and 22-23 in the reply filed on April 24, 2006, is acknowledged. The traversal is on the grounds that the processes of making of Group II and methods of use of Group III of the instant single crystalline compound needs to be examined together. This is found persuasive, therefore, the restriction requirement, dated march 23, 2006, has been withdrawn herein. Claims 12-23 are prosecuted in the case.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 15 and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 15 and 17, line 2, respectively recites the limitation "in patent specification EP 0308341", fails to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims must stand alone to define invention, and incorporation into claims by express reference to specification is not permitted, are properly rejected under 35 U.S.C. 112, second paragraph, see Ex parte Fressola, No. 93-0828. Incorporation of the processes of EP 0308341 into claims 15 and 17 respectively, would obviate the rejection.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 19 is rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for instant claimed methods of use of compounds of formula (I) for treating cardiovascular disease, does not reasonably provide enablement for instant claimed methods of use of compounds of formula (I) for treating a disease other than cardiovascular disease. The specification does not enable any person skilled in the art to which it pertains, with which it is most nearly connected, to use the invention

commensurate in scope with these claims, see claim 19.

For rejections under 35 U.S.C. 112, first paragraph, the following factors must be considered (In re Wands, 8 USPQ2d 1400, 1988):

1) Nature of invention.

2) State of prior art.

3) Level of ordinary skill in the art.

4) Level of predictability in the art.

5) Amount of direction and guidance provided by the inventor.

6) Existence of working examples.

7) Breadth of claims.

8) Quantity of experimentation needed to make or use the invention based on the content of the disclosure.

In the instant case:

Nature of the invention

The nature of invention of claim 19 is a method of use of compound of formula (I) treating a living animal without limitation of named diseases.

The state of prior art and the predictability or lack thereof in the art

The state of the prior art is that the pharmacological art involves screening in

vitro and in vivo to determine which pharmaceutical compounds exhibit the desired pharmacological activities (i.e. what pharmaceutical compounds can treat which specific diseases by what mechanism). There is no absolute predictability even in view of the seemingly high level of skill in the art. The existence of these obstacles establishes that the contemporary knowledge in the art would treat one of ordinary skill in the art from accepting any therapeutic regimen on its face.

The instant claimed invention is highly unpredictable as discussed below:

It is noted that the pharmaceutical art is unpredictable, requiring each embodiment to be individually assessed for physiological activity. In re Fisher, 427 F.2d 833, 166 USPQ 18 (CCPA 1970) indicates that the more unpredictable an area is, the more specific enablement is necessary in order to satisfy the statute.

Applicants are claiming a pharmaceutical compounds of formula (I) effective for treatment of cardiovascular disease and any other unknown diseases, wherein the angiotensin I converting enzyme is inhibited. As such, the specification fails to enable the skilled artisan to use the compounds of the formula (I) to treat a disease other than

cardiovascular disease. The existence of these obstacles establishes that the contemporary knowledge in the art would treat one of ordinary skill in the art from accepting any treatment regimen on its face. In addition, there is no established correlation between in vitro activity and accomplishing treatment of a disease other than cardiovascular disease, in vivo, and those skilled in the art would not accept allegations in the instant specification to be reliable predictors of success, and those skilled in the

ad would not be able to use the compounds of the formula (I) since there is no description of an actual method wherein the other diseases in a host is treated.

Hence, one of skill in the art is unable to fully predict possible results from the administration of the compound of the claims due to the unpredictability of the treatment of any diseases other than cardiovascular disease , is known to have many obstacles that would prevent one of ordinary skill in the art from accepting treatment regimen on its face.

The amount of direction or guidance present and the presence or absence of working examples

The only direction or guidance present in the instant specification is the listing of cardiovascular disease, which are correlated with the inhibition of angiotensin I converting enzyme. There are no in vitro or in vivo working examples present for the treatments directly related to any diseases other than cardiovascular disease by the administration of pharmaceutical compounds of the instant invention.

The breadth of the claims

The breadth of the claims is a pharmaceutical compound effective for the treatment cardiovascular disease and other unknown diseases.

The quantity of experimentation needed

The quantity of experimentation needed is undue experimentation. One of skill in the art would need to determine what any diseases would be benefited by the

administration of the pharmaceutical compounds of the instant invention and would furthermore then have to determine which of the claimed methods of use would provide the treatment of any other diseases, if any.

The level of the skill in the art

The level of skill in the art is high. However, due to the unpredictability in the pharmaceutical art, it is noted that each embodiment of the invention is required to be individually assessed for physiological activity by in vitro and in vivo screening to determine which compounds exhibit the desired pharmacological activity and which diseases would benefit from this activity. Thus, the specification fails to provide sufficient support of the broad use of the pharmaceutical compounds of the instant claim for the treatment of any diseases other than cardiovascular disease. As a result necessitating one of skill to perform an exhaustive search for which any diseases can be treated by what pharmaceutical compounds of the instant claims in order to practice the claimed invention.

Genentech Inc. v. Novo Nordisk A/S (CA FC) 42 USPQ2d 1001 , states that " a patent is not a hunting license. It is not a reward for search, but compensation for its successful conclusion" and "patent protection is granted in return for an enabling disclosure of an invention, not for vague intimations of general ideas that may or may not be workable".

Therefore, in view of the Wands factors and In re Fisher (CCPA 1970) discussed above, to practice the claimed invention herein, a person of skill in the art would have to

engage in undue experimentation, with no assurance of success. This rejection can be overcome by incorporating "cardiovascular disease" into the claim.

Prior Art Rejections

7. In regards to applicants compound claims 12-23, the prior art references of Vincent et al. US 4,914,214 or Guez et al. US 6,653,336, while not providing applicants' instant X-ray diffraction data (i.e., Vincent et al. '214) or the instant crystalline form (i.e., Guez et al. '336). However, Vincent et al. do name crystalline form of perindopril of tert-butylamine salt and Guez et al. do name the compound perindopril of tert-butylamine salt, which puts this product in the public domain. As these forms differ from the claims in that the references are silent on the X-ray diffraction data or the crystalline form, applicants must show that their crystalline form really is different from any of the ones prepared in the prior art. MPEP 2112 states: "Something which is old does not become patentable upon the discovery of a new property. The claiming of a new use, new function or unknown property which is inherently present in the prior art does not necessarily make the claim patentable. In re Best, 562 F.2d 1252, 1254, 195 USPQ 430, 433 (CCPA 1977). In this case, the 'unknown property" is the particular crystalline form. This is unknown because the references are silent on this property. MPEP 2112 goes on to state: "A rejection under 35 USC 102/103 can be made when the prior art product seems to be identical except that the prior art is silent as to an inherent characteristic. Where applicant claims a composition in terms of a function, property or characteristic and the compositions of the prior art is the same as that of the claim but the function is not explicitly disclosed by the reference, the examiner may make a

rejection under both 35 USC 102 and 103, expressed as a 102/103 rejection." Again, the "characteristic" which the prior art is silent on is the crystalline form or the X-ray diffraction data.

This is not an ordinary inherency situation where it is not explicitly stated what the product actually is. Here the reference explicitly teaches exactly what the compound is. The only difference is a characteristic about which the reference happens to be silent. Se also Ex parte Anderson, 21 USPQ 2nd 1241 and 1251, discussion of Rejection E. There, the decision states, "There is ample precedent for shifting the burden to an applicant to reproduce a prior ad product whose final structure or properties are, at least, in part determined by the precise process used in its manufacture." (page 1253). The "properties' branch of that statement applies here. Applicants are reminded that the PTO has no testing facilities. The composition claims 20 and 22-23 are rejected under 35 USC 102(a) or (e) as the prior art references disclose compositions comprising applicants' instantly claimed invention as it is the state of the prior art that the preparation of pharmaceutical compositions requires, milling, adding excipients, surfactants, etc. The process of preparing a pharmaceutical composition will cause a specific crystalline form, if in the metastable state, to resort back to the most thermodynamically stable form, which is the form with the lowest vapor pressure. Polymorphs tend to convert from less stable to more stable forms, see Brittain's publication, polymorphism in Pharmaceutical Solids, Drugs and the Pharmaceutical Science; 1999, V. 95, pages 348-361.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference (i.e., Guez et al. US 6,653,336) is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 20 and 22-23 are rejected under 35 U.S.C. 102(a) or (e) as being anticipated by Guez et al. US 6,653,336.

Applicants claim a crystalline form of the compound of formula (I), i.e., perindopril of tert-butylamine salt, and its pharmaceutical compositions comprising a compound, i.e., perindopril of tert-butylamine salt, and a diuretic (i.e., indapamide), see claims 20, and 22-23.

Guez et al. disclose a pharmaceutical compositions tablet comprising a compound, i.e., perindopril of tert-butylamine salt, and a diuretic (i.e., indapamide), see column 4, Examples 1-2. Therefore, Guez et al. pharmaceutical compositions clearly anticipate the instant claims 20 and 22-23.

Claims 12-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Vincent et al. US 4,914,214.

Applicants claim a crystalline form of the compound of formula (I), i.e., perindopril of tert-butylamine salt, and its pharmaceutical compositions, see claim 12. Dependent claims 13-23 of claim 12 are drawn to processes of making, compositions, and methods of use.

Vincent et al. disclose the same instant compound of same tert-butylamine salt in crystalline form, see column 10, lines 10-31. Therefore, Vincent et al. crystalline form of the same compound perindopril of tert-butylamine salt clearly anticipate the instant claim 12. The dependents claims 13-23 of claim 12, drawn to processes of making, compositions, and methods of use are also rejected along with claim 12 under 35 U.S.C. 102(b).

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in Graham v. John Deere Co., 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.

2. Ascertaining the differences between the prior art and the claims at issue.

3. Resolving the level of ordinary skill in the pertinent art.

4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

10. Claims 12-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vincent et al. US 4,914,214 in view of Guez et al. or Brittain's publication, polymorphism in Pharmaceutical Solids, Drugs and the Pharmaceutical Science; 1999, V. 95, pages 348-361. US 6,653,336. Guez et al. '336 is 102(e) reference.

Applicants claim a crystalline form of the compound of formula (I), i.e., perindopril of tert-butylamine salt, methods of use, and its pharmaceutical compositions, see claim 12, 19, and 22-23. The claimed pharmaceutical compositions of claims 22-23 also comprises a diuretic, i.e., indapamide. The instant claimed compound is used as agents treating cardiovascular diseases.

Determination of the scope and content of the prior art (MPEP §2141.01)

Vincent et al. disclose the same instant compound of same perindopril of tert-butylamine salt in crystalline form, see column 10, lines 10-31. Guez et al. disclose a pharmaceutical compositions tablet comprising a compound, i.e., perindopril of tert-butylamine salt, and a diuretic (i.e., indapamide), see column 4, Examples 1-2. Vincent et al. or Guez et al. compound perindopril of tert-butylamine salt is used for treating arteriolo-capillary microcirculatory disorders(i.e., cardiovascular diseases), see columns 1-4.

Determination of the difference between the prior art and the claims (MPEP §2141.02)

The difference between the instant claims and Vincent et al. or Guez et al. is that Vincent et al. or Guez et al. silence the X-ray diffraction data of the instant compound. Moreover, it is well recognized in the art that process of preparing pharmaceutical composition will produce the thermodynamically stable form of crystals, thus, Vincent et al. crystal form and the instant form γ, after mixing, grinding, compressing would

both be transformed into the same thermodynamically stable form(s) of the instant claimed γ form, see Brittain's publication, pages 348-361.

Finding of prima facie obviousness-rational and motivation (MPEP §2142-2143)

One having ordinary skill in the art would find the instant claims 12-23 prima facie obvious **because** one would be motivated to employ the compounds/compositions of Vincent et al. or Guez et al. to obtain the instant crystalline form of the same compound perindopril of tert-butylamine salt and its pharmaceutical compositions, wherein the instant compound is in a crystalline form and a pharmaceutical compositions also comprising a diuretic. Further, changing the form, purity or other characteristic of an old product does not render the novel form patentable where the difference in form, purity or characteristic was inherent in or rendered obvious by the prior art, see In re Cofer, 148 U.S.P.Q. 268 (CCPA 1966). Therefore, absent a showing of unobvious and superior properties in terms of mechanic benefits, the instant claimed crystalline forms and its compositions of known compounds would have been suggested to one skilled in the art.

The motivation to obtain the claimed crystalline form of the compound perindopril of tert-butylamine salt or its pharmaceutical composition derives from known Vincent et al. or Guez et al. pharmaceutically useful compounds/compositions with the expectation of obtaining a pharmaceutically useful benefit, such as longer shelf life, stability, enhanced deliverability, etc., would possess similar activities (i.e., agents treating cardiovascular diseases) to that which is claimed in the reference.

Double Patenting

11. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

12. Claims 12-23 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 8-9, and 11-12 of Pfeiffer et al. co-pending application No. 11/052,489, or over claims 14, 22-23, and 25-26 of Pfeiffer et al. co-pending application No. 10/792,355 in view of Brittain's publication, polymorphism in Pharmaceutical Solids, Drugs and the

Pharmaceutical Science; 1999, V. 95, pages 348-361. Although the conflicting claims are not identical, they are not patentably distinct from each other and reasons are as follows.

Applicants claim a crystalline form of the compound of formula (I), i.e., perindopril of tert-butylamine salt, and its pharmaceutical compositions, and methods of use, see claim 12, 19, and 22-23. The claimed pharmaceutical compositions of claims 22-23 also comprises a diuretic. The instant claimed compounds are used as agents treating cardiovascular diseases.

Pfeiffer et al. '489 or '355 claim a crystalline form the same instant compound perindopril of tert-butylamine salt, methods of use, and its pharmaceutical compositions. Pfeiffer et al. compositions also comprise a diuretic indapamide.

The difference between the instant claims and Pfeiffer et al. is that the name of the crystalline form of instant claims and Pfeiffer et al. are different, i.e., the instant claims are γ form, while Pfeiffer et al. '489 is β form and Pfeiffer et al. '355 is α form. Moreover, it is well recognized in the art that process of preparing pharmaceutical composition will produce the thermodynamically stable form of crystals, thus, Pfeiffer et al. α or β crystal form and the instant form γ, after mixing, grinding, compressing would both be transformed into the same thermodynamically stable form(s) of the instant claimed γ form, see Brittain's publication, pages 348-361.

One having ordinary skill in the art would find the instant claims 12-23 prima facie obvious **because** one would be motivated to employ the compounds of Pfeiffer et al. to obtain the instant crystalline form (i.e., γ form) of the compound perindopril of tert-

butylamine salt and its pharmaceutical compositions, wherein the instant compound is in a crystalline form and a pharmaceutical compositions comprising a diuretic. To demonstrate unobviousness from Pfeiffer et al. compounds/compositions, applicants must show unexpected results stemming from the instant crystalline form over the crystalline form of Pfeiffer et al. in form of mechanical advantage(s) of the instant crystal over the crystal of Pfeiffer et al. , see Ex parte Conn and Norman, 119 USPQ 388 (1956), also see In re Grose & Flanigen, 201 USPQ57.

The motivation to obtain the claimed crystalline form of the compound perindopril of tert-butylamine salt or its pharmaceutical compositions derives from known Pfeiffer et al. Pharmaceutically useful compounds with the expectation of obtaining a pharmaceutically useful benefit, such as longer shelf life, stability, enhanced deliverability, etc., would possess similar activities (i.e., agents treating cardiovascular diseases) to that which is claimed in the reference.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Shiao whose telephone number is (571) 272-0707. The examiner can normally be reached on 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph K. McKane can be reached on (571) 272-0699. The fax phone

number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Joseph K. McKane/
Joseph K. McKane
Supervisory Patent Examiner
Art Unit 1626

/R.S./
Robert Shiao, Ph.D.
Patent Examiner
Art Unit 1626

June 05, 2006